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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

E.P., a minor, by and through his guardian
ad litem, MICHEL HERNANDEZ-DISLA,

Plaintiff,

vs.

TEHACHAPI UNIFIED SCHOOL
DISTRICT and JASON GRIMES,

Defendants.

Case No.

COMPLAINT

1) Violation of 42 U.S.C. § 1983

**2) Violation of Americans with
Disabilities Act, 42 U.S.C. § 12132**

**3) Violation of Bane Act, Cal. Civ.
Code. § 52.1**

**4) Violation of Mandatory Statutory
Duty, Cal. Gov. Code § 815.6**

5) Battery

**6) Negligent Hiring, Supervision, or
Retention of Employee**

Demand for Jury Trial

COMES NOW Plaintiff E.P., by and through his guardian ad litem, MICHEL
HERNANDEZ-DISLA, alleging and requesting relief as follows:

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2. Pursuant to 28 U.S.C. § 1391(b), venue is proper in the Eastern District of California because the events and/or omissions giving rise to this complaint substantially occurred within the district.

3. Plaintiff E.P. is a minor who resides in Kern County, California.¹ During all relevant times, Plaintiff was a student enrolled in the TEHACHAPI UNIFIED SCHOOL DISTRICT. Plaintiff brings this action through his mother and guardian ad litem, MICHEL HERNANDEZ-DISLA.

5. Defendant JASON GRIMES is a special education teacher who was employed by TUSD during all relevant times. All actions by GRIMES alleged herein

COMPLAINT - 2

1 were taken under color of state law and within the course and scope of his employment
2 with TUSD. Defendant GRIMES is sued in his individual capacity.

4 **FACTUAL ALLEGATIONS**

5 6. E.P. was born on January 17, 2013 and is presently 10 years old.

6 7. E.P. has been diagnosed with Autism Spectrum Disorder. During all
7 relevant times, as a result of his autism, E.P. has had significant challenges with
8 communication, social development, sensory processing, motor skills, and behavior.
9

10 8. E.P.'s speech development is extremely delayed. While he uses some words
11 and short phrases, he primarily communicates by gestures and pointing. As a result of his
12 limited communication skills, E.P. is unable to report when is abused or mistreated by the
13 staff at school.
14

15 9. Socially, E.P. is aloof, stares vacantly at times, and seems to be in his own
16 world. He does not play or interact with other children.
17

18 10. In the sensory area, E.P. has unpredictable responses to sounds and noises.

19 11. Emotionally, E.P. has frequent mood changes and laughs or cries for no
20 apparent reason, alternating with times when he shows no response to his environment.
21

22 12. E.P.'s maladaptive behaviors include frequent tantrums, screaming, crying,
23 work refusals, and self-injurious acts. These behaviors occur frequently at home, at school,
24 and in the community.
25

26 13. During all relevant times, TUSD failed to provide Plaintiff E.P. with
27 positive behavioral interventions and supports ("PBIS") that would manage and
28 remediate E.P.'s behaviors and would allow E.P. to have equal and meaningful access to

1 the benefits of a public education.

2 14. Since October 10, 2018, E.P. has been eligible for special education and
3 related services under the Individuals with Disabilities Education Act (“IDEA”).
4

5 15. Since kindergarten, E.P. has attended Tompkins Elementary, a school
6 within TUSD. During all relevant times, E.P. has been placed in a special day class
7 (“SDC”) at Tompkins Elementary for students with moderate to severe disabilities.
8

9 16. E.P. was in the fourth grade during the 2022-2023 school year.

10 17. Defendant GRIMES was the special education teacher assigned by TUSD
11 to E.P.’s classroom at the beginning of the 2022-2023 school year. The classroom had a
12 mix of students who were in the first to the fourth grades.
13

14 18. Plaintiff is informed and believes and thereupon alleges that Defendant
15 GRIMES was suspended and/or terminated by TUSD in September 2022 for verbally and
16 physically abusing several of the children in the classroom, including E.P.
17

18 19. Plaintiff is informed and believes and thereupon alleges that defendant
19 GRIMES was previously disciplined by TUSD during the 2021-2022 school year for
20 inappropriate and/or unsafe conduct with a disabled student in his class.
21

22 20. In mid-September 2022, Devannee Alondra Gutierrez, an employee of a
23 Non-Public Agency (“NPA”)² who was providing services to another student in the
24

25
26
27 ² NPAs are private companies approved by the California Department of Education
28 to provide special education and related services to students with disabilities on behalf of
a school district.

1 classroom, reported to TUSD's Director of Special Education that GRIMES was verbally,
2 physically, and emotionally abusive of several students in the classroom, including
3 Plaintiff E.P.
4

5 21. Ms. Gutierrez reported that GRIMES had restrained and secluded E.P. on
6 multiple occasions as a punitive measure, in violation of California's prohibition against
7 the corporal punishment of students. *See* Cal. Educ. Code § 49001.
8

9 22. When E.P. would begin to engage in vocal outbursts in the classroom as a
10 manifestation of his disability, GRIMES would get in E.P.'s face, puff out his chest, and
11 stand over him in a menacing manner, in a misguided attempt to intimidate E.P. into being
12 silent. But these intimidation tactics predictably escalated E.P.'s behaviors. He would
13 recoil in fear and would begin to cry uncontrollably.
14

15 23. On August 19, 2022, at approximately 2:00 p.m., GRIMES became angry
16 at E.P. for putting toys in his shorts, a behavior that was clearly a manifestation of E.P.'s
17 disability. GRIMES yelled at E.P. and ordered him to place the toys in the sink in the
18 classroom. When E.P., who was frightened, did not immediately comply, GRIMES
19 grabbed him violently by the arm and forcefully dragged him to the sink area, using force
20 that was objectively unreasonable under the circumstances. After prying the toys out of
21 E.P.'s hands and placing them in the sink, GRIMES then forcefully dragged E.P. to a
22 seclusion area in the classroom.
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26 24. The seclusion area is a small space within the classroom that is normally
27 used for changing students who need assistance with toileting. The seclusion area is
28 surrounded by curtains on all sides for privacy and is isolated from the rest of the

1 classroom.

2 25. After spending several minutes in the seclusion area, E.P. came out on his
3 own and began to cry. GRIMES jumped from his seat and stood over E.P. in a threatening
4 manner. E.P. was visibly scared and started crying and repeatedly asking for his “mommy.”

5
6 26. On August 22, 2022, at approximately 9:52 a.m., E.P. started crying while
7 the class was watching a YouTube video. GRIMES yelled at E.P. to “go away” and said:
8 “You’re not going to ruin everyone else’s day.” When E.P. continued to cry, GRIMES
9 forcefully dragged him to the seclusion area by his arm and closed the curtains so that
10 E.P. could not see or engage with the rest of the class. GRIMES either forgot about E.P.
11 or intentionally left him in the seclusion area, without supervision and isolated from his
12 classmates, for approximately 30 minutes, after which an aide noticed E.P.’s absence and
13 brought him back with the other students.

14
15
16 27. On another occasion, when E.P. was refusing to do work – which, again, is
17 a behavior that is a manifestation of E.P.’s disability – GRIMES grabbed E.P. on his torso
18 and violently shoved him to the floor. Eric fell down and rolled on the classroom floor.

19
20 28. Ms. Gutierrez reported that incidents like the ones described herein
21 “happen[ed] multiple times a day, every day,” and that the other TUSD employees in the
22 classroom “stay[ed] quiet or ignore[d] this.”

23
24 29. TUSD never informed MS. HERNANDEZ-DISLA about any of these
25 incidents of verbal and physical abuse in the classroom. Rather, MS. HERNANDEZ-
26 DISLA independently learned about these incidents from Ms. Gutierrez.

27
28 30. GRIMES was eventually removed from the classroom in mid-September

1 2022 and has never returned. For the remainder of the 2022-2023 school year, TUSD did
2 not assign any other credentialed special education teacher to the classroom. Instead, the
3 classroom was led by paraprofessionals or temporary and uncredentialed substitute
4 teachers.
5

6 31. E.P.'s behaviors and functioning regressed significantly after suffering the
7 abuse by GRIMES. As documented in a psychological assessment by world-renowned
8 autism expert, B.J. Freeman, Ph.D., E.P. stopped sleeping in his own bed. He began
9 yelling, crying, and tantruming more frequently at school. He started engaging in
10 aggressive and self-injurious behaviors. On numerous occasions during the 2022-2023
11 school year, E.P.'s behaviors at school became so severe that MS. HERNANDEZ-DISLA
12 was called to bring him home for the rest of the day.
13
14

15 **COMPLIANCE WITH CALIFORNIA GOVERNMENT CLAIMS ACT**

16

17 32. On February 17, 2023, Plaintiff timely presented his claims for damages set
18 forth herein to TUSD in accord with California Government Code § 910.
19

20 33. TUSD failed to act on Plaintiff's claims within 45 days after presentment
21 as required by California Government Code § 912.4. Thus, the claims "shall be deemed
22 to have been rejected" by the Defendant. *Id.* at § 912.4(c).

23 **FIRST CLAIM FOR AGAINST DEFENDANT GRIMES – VIOLATION OF 42** 24 **U.S.C. § 1983**

25 34. Plaintiff repeats and incorporates by reference the allegations in each of the
26 preceding paragraphs.
27

28 35. The Fourth Amendment to the United States Constitution protects

1 individuals against unreasonable seizures of their person. A seizure violates the Fourth
2 Amendment if it is objectively unreasonable under the circumstances. *See, e.g., Doe v.*
3 *Hawaii Dep't of Educ.*, 334 F.3d 906, 909 (9th Cir. 2003).

4
5 36. The Fourth Amendment applies to students in the school environment. The
6 excessive use of force by a public school official against a student constitutes an
7 unreasonable seizure in violation of the Fourth Amendment. *See, e.g., Preschooler II v.*
8 *Clark Cnty. Sch. Bd. of Trs.*, 479 F.3d 1175, 1180 (9th Cir. 2007). As the Ninth Circuit
9 made clear in *Preschooler II*, the Fourth Amendment “plainly prohibits excessive hitting,
10 dragging or throwing of public school children.” *Id.* at 1182.

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12
13 37. Defendant GRIMES is a “person” subject to liability under 42 U.S.C. §
14 1983.

15 38. Defendant GRIMES, while acting under color of state law and within the
16 course and scope of his employment with TUSD, violated Plaintiff’s rights under the
17 Fourth Amendment by applying excessive force that was objectively unreasonable under
18 the circumstances and served no pedagogical purpose.

19
20 39. As a direct and proximate result of Defendant GRIMES’s violation of his
21 constitutional rights, Plaintiff suffered physical injury, emotional distress, mental anguish
22 and suffering, and humiliation.

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24 **SECOND CLAIM FOR RELIEF AGAINST DEFENDANT TUSD – VIOLATION**
25 **OF TITLE II OF AMERICANS WITH DISABILITIES ACT**

26 40. Plaintiff repeats and incorporates by reference the allegations in each of the
27 preceding paragraphs.
28

1 41. Title II of the ADA applies to all services, programs, and activities of public
2 entities, including public educational institutions. *See* 42 U.S.C. § 12131 *et seq.*

3
4 42. During all relevant times, Defendant TUSD has been a public entity
5 covered by Title II of the ADA.

6 43. Under Title II of the ADA, “no qualified individual with a disability shall,
7 by reason of such disability, be excluded from participation in or be denied the benefits
8 of the services, programs, or activities of a public entity, or be subjected to discrimination
9 by any such entity.” 42 U.S.C. § 12132; *see also* 28 C.F.R. § 35.130.
10

11 44. Title II of the ADA requires a public entity to “make reasonable
12 modifications in policies, practices, or procedures when the modifications are necessary
13 to avoid discrimination on the basis of disability, unless the public entity can demonstrate
14 that making the modifications would fundamentally alter the nature of the service,
15 program, or activity.” 28 C.F.R. § 35.130(b)(7)(i).
16
17

18 45. Plaintiff is a “qualified individual with a disability” within the meaning of
19 the ADA. Plaintiff’s diagnosed autism substantially limits one or more major life
20 activities, including but not limited to learning.
21

22 46. During all relevant times, Defendant TUSD has been aware of Plaintiff’s
23 disability.
24

25 47. During the 2022-2023 school year, Defendant TUSD excluded Plaintiff
26 from participation in and/or denied him full and equal access to the benefits of the
27 District’s services, programs, and activities, by placing Plaintiff in a hostile educational
28 environment where he was repeatedly subjected to physical and psychological abuse by

1 a special education teacher employed by the District.

2 48. During the 2022-2023 school year, TUSD failed to provide Plaintiff with
3 reasonable accommodations, services, and supports, such as PBIS, that Plaintiff needed
4 in order to enjoy meaningful access to the benefits of a public education.
5

6 49. Defendant TUSD's discrimination against Plaintiff was by reason of his
7 disability and was committed intentionally and/or with deliberate indifference.
8

9 50. As a direct and proximate result of the foregoing, Plaintiff suffered injury,
10 including physical injury, loss of educational opportunity, emotional distress and pain,
11 mental anguish, and humiliation.
12

13 **THIRD CLAIM FOR RELIEF AGAINST ALL DEFENDANTS – VIOLATION**
14 **OF BANE ACT**
(Cal. Civ. Code. § 52.1)

15 51. Plaintiff repeats and incorporates by reference the allegations in each of the
16 preceding paragraphs.
17

18 52. The Tom Bane Civil Rights Act prohibits interference “by threat,
19 intimidation, or coercion, with the exercise or enjoyment by any individual or individuals
20 of rights secured by the Constitution or laws of the United States, or of the rights secured
21 by the Constitution or laws of this state” Cal. Civ. Code § 52.1(b).
22

23 53. Defendant GRIMES violated Plaintiff's right to be free from unreasonable
24 seizures guaranteed by the Fourth Amendment to the United States Constitution.
25

26 54. Defendant GRIMES acted with the specific intent to violate Plaintiff's right
27 to freedom from unreasonable seizures.

28 55. Defendant TUSD is vicariously liable for Bane Act violations by its

1 employees.

2 56. As a direct and proximate result of the foregoing, Plaintiff suffered physical
3 injury, emotional distress, mental anguish and suffering, and humiliation.
4

5 **FOURTH CLAIM FOR RELIEF AGAINST DEFENDANT TUSD – VIOLATION**
6 **OF MANDATORY STATUTORY DUTY**
7 **(Cal. Gov. Code § 815.6)**

8 57. Plaintiff repeats and incorporates by reference the allegations in each of the
9 preceding paragraphs.

10 58. The Child Abuse and Neglect Reporting Act imposes on TUSD and its
11 administrators, teachers, aides, and other school personnel a mandatory duty to report
12 suspected child abuse or neglect, including unlawful corporal punishment or injury, to
13 “any police department or sheriff’s department, not including a school district police or
14 security department, county probation department, if designated by the county to receive
15 mandated reports, or the county welfare department.” Cal. Penal Code §§ 11165.9.
16
17

18 59. Under the Child Abuse and Neglect Reporting Act, a mandated reporter
19 *must* make a report “whenever the mandated reporter, in the mandated reporter’s
20 professional capacity or within the scope of the mandated reporter’s employment, has
21 knowledge of or observes a child whom the mandated reporter knows or reasonably
22 suspects has been the victim of child abuse or neglect. The mandated reporter shall make
23 an initial report by telephone to the agency immediately or as soon as is practicably
24 possible, and shall prepare and send, fax, or electronically transmit a written followup
25 report within 36 hours of receiving the information concerning the incident.” Cal. Penal
26 Code § 111666.
27
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1 60. The Child Abuse and Neglect Reporting Act was designed to protect
2 children against the types of abuse perpetrated by Defendant GRIMES against Plaintiff
3 E.P.
4

5 61. Various TUSD employees, including the District's former Director of
6 Special Education and one or more classroom aides, were undeniably aware of the abuse
7 perpetrated by Defendant GRIMES against Plaintiff E.P. Yet, these TUSD employees,
8 who are mandated reporters, failed to report such abuse as required by the Child Abuse
9 and Neglect Reporting Act.
10

11 62. Defendant TUSD's failure to comply with its mandatory duty under the
12 Child Abuse and Neglect Reporting Act caused Plaintiff to incur damages, including
13 physical injury, emotional distress, mental anguish and suffering, and humiliation.
14

15 **FIFTH CLAIM FOR RELIEF AGAINST DEFENDANT GRIMES – BATTERY**
16

17 63. Plaintiff repeats and incorporates by reference the allegations in each of the
18 preceding paragraphs.
19

20 64. Defendant GRIMES touched Plaintiff on multiple occasions with the intent
21 to harm or offend.
22

23 65. Plaintiff did not consent to the harmful or offensive touching by Defendant
24 GRIMES.
25

26 66. A reasonable person in Plaintiff's situation would have been offended by
27 the touching.
28

1 67. As a direct and proximate result of Defendant GRIMES's conduct, Plaintiff
2 was harmed and suffered damages, including physical injury, emotional distress, mental
3 anguish and suffering, and humiliation.
4

5 **SIXTH CLAIM FOR RELIEF AGAINST DEFENDANT TUSD – NEGLIGENT**
6 **HIRING, RETENTION, AND SUPERVISION**

7 68. Plaintiff repeats and incorporates by reference the allegations in each of the
8 preceding paragraphs.

9 69. Defendant TUSD owes a duty of care to protect and supervise the children
10 in its schools, including Plaintiff E.P.
11

12 70. Defendant TUSD must take reasonable care in hiring and maintaining the
13 ongoing employment of all District personnel. Defendant TUSD must properly train and
14 supervise its employees to ensure that they are competent in the performance of their
15 duties, and to ensure that the District's policies and procedures are followed by school
16 employees. Defendant TUSD is further responsible for taking reasonable steps to remove
17 personnel from contact with students when it becomes aware that they pose a danger to
18 the health and well-being of those students.
19
20

21 71. Defendant TUSD failed to exercise reasonable care in its hiring, retention,
22 and/or supervision of Defendant GRIMES. TUSD knew or should have known, based on
23 a prior history of inappropriate conduct with disabled students, that GRIMES was unfit
24 to teach disabled students, posed a particular risk or harm for such students, and that
25 particular harm materialized vis-à-vis the Plaintiff because of TUSD's failure to take
26 reasonable steps to remove GRIMES from contact with Plaintiff.
27
28

1 72. Defendant TUSD's breach of duty was a substantial factor in causing harm
2 to Plaintiff, including physical injury, emotional distress, mental anguish and suffering,
3 and humiliation.
4

5 **WHEREFORE**, Plaintiff prays for the following relief:

- 6 (1) An award of compensatory damages according to proof;
7
8 (2) An award of reasonable attorney fees and costs;
9
10 (3) Such other and further equitable relief as this Court may deem just under
11 the circumstances.

12 **REQUEST FOR JURY TRIAL**

13 Plaintiff hereby requests a jury trial on all issues so triable.

14 DATED this 14th day of December, 2020 at Los Angeles, California.

15 CALIFORNIA JUSTICE PROJECT
16 Attorneys for Plaintiffs

17
18 By: /s/ Goriune Dudukgian
19 Goriune Dudukgian, SBN 218714
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